



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 13, 1993

Mr. Ignacio Ramirez, Sr.
City Attorney
City of Baytown
P.O. Box 424
Baytown, Texas 77522-0424

OR93-553

Dear Mr. Ramirez:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), Government Code chapter 552.¹ Your request was assigned ID# 20677.

The City of Baytown (the "city") has received a request for "all the memoranda written or authored by Warren E. Lee while he was employed by the City of Baytown." You advise us that some of the requested information has been or will be made available to the requestor. You claim, however, that the remaining information, which you have submitted to us for review, is excepted from disclosure under sections 552.103(a) and 552.107 of the act.²

You have submitted 47 memoranda to us for review. You claim that the memoranda numbered 1 through 5 and the memorandum numbered 39 are excepted from required public disclosure by section 552.103(a) of the act. Section 552.103(a) excepts from required public disclosure

information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is,

¹We note that V.T.C.S. article 6252-17a was repealed by the 73d Legislature. Acts 1993, 73d Leg. ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

²In your request for a ruling, you initially suggest that some of the requested information is excepted from disclosure by section 552.106 of the act. However, you do not specifically claim that any of the documents you have submitted for our review are within the protection of this provision, nor is its applicability otherwise apparent to us.

or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection.

Section 552.103(a) applies only when litigation in a specific matter is pending or reasonably anticipated and only to information related to that litigation. Open Records Decision No. 551 (1990). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 (1986) at 4.

The memorandum numbered 1 relates to a delinquent tax payment. You have submitted to us for review correspondence between the city and the allegedly delinquent taxpayer. Although it is clear from these documents that a dispute exists between the city and the taxpayer, these documents do not on their face demonstrate either the pendency or likelihood of litigation. Neither the city nor the taxpayer have alluded to existing litigation, nor has either party threatened litigation in the event the dispute is not resolved. Accordingly, we conclude that the memorandum numbered 1 may not be withheld from required public disclosure under section 552.103(a) of the Open Records Act.

The memoranda numbered 2 through 5 and the memorandum numbered 39 relate to a housing discrimination complaint filed recently filed with the United States Department of Housing and Urban Development ("HUD") pursuant to the Fair Housing Act, 42 U.S.C. § 3600 *et seq.* This office has held in several prior decisions that the pendency of a complaint before the Equal Employment Opportunity Commission ("EEOC") establishes that litigation is reasonably anticipated. *See, e.g.* Open Records Decision Nos. 386 (1983); 326 (1982); 266 (1981). The federal regulations applicable to the filing, investigation, and conciliation of HUD complaints are similar to those applicable to the filing, investigation, and settlement of EEOC complaints. *Compare* 24 C.F.R. §§ 103.10-103.335 *with* 29 C.F.R. §§ 1601.6-1601.18, 1601.20, 1601.24. Furthermore, both the HUD and the EEOC regulations authorize the federal government to institute civil action for preliminary or temporary relief in certain instances. 24 C.F.R. § 103.500 (HUD); 29 C.F.R. § 1601.23 (EEOC). Finally, both regulations authorize in certain instances the commencement of a civil action against the responding party after a finding of reasonable cause to believe the complainant's charges true. *See* 24 C.F.R. § 103.410 (authorizing HUD complainant to elect commencement of civil action by attorney general after determination of reasonable cause); 29 C.F.R. § 1601.28(b) (authorizing EEOC complainant to bring civil action after determination of reasonable cause, failure of conciliation, and decision of commission not to bring action itself).

We believe that the pendency of a complaint before HUD for housing discrimination is sufficiently similar to a complaint before the EEOC for employment discrimination to conclude that litigation is reasonably anticipated here. Accordingly, the

memoranda numbered 2 through 5 and the memorandum numbered 39 may be withheld from required public disclosure under section 552.103(a) of the act.³

You claim that the remaining documents submitted to us for review are excepted from required public disclosure by section 552.107 of the act. Section 552.107 excepts

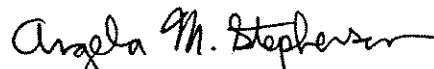
matters in which the duty of the Attorney General of Texas or an attorney of a political subdivision, to his client, pursuant to the Rules and Canons of Ethics of the State Bar of Texas are prohibited from disclosure, or which by order of a court are prohibited from disclosure.

In Open Records Decision No. 574 (1990), this office held that section 552.107 protected information that revealed client confidences to an attorney or that revealed the attorney's legal advice. Section 552.107, however, does not protect purely factual information unless it contains legal advice or reveals client confidences. *Id.*; see also Open Records Decision No. 589 (1991).

We have examined the documents submitted to us for review. We conclude that the information for which you seek section 552.107 protection contains an attorney's legal advice or reveals client confidences. Accordingly, the memoranda numbered 6 through 47, except the memoranda numbered 18 and 22, may be withheld in their entirety under section 552.107 of the act. The marked portions of the memoranda numbered 18 and 22 may also be withheld under section 552.107.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Angela M. Stepherson
Assistant Attorney General
Open Government Section

AMS/GCK/jcc

³In reaching this conclusion, however, we assume that the opposing party to the litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, e.g., through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). If the opposing parties in the litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). We also note that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

Ref.: ID# 20677
ID# 21225
ID# 21297

Enclosures: Documents submitted

cc: Mr. Warren E. Lee
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(w/o enclosures)